DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 97-0311
Sales and Use Tax
For The Tax Periods: 1996, 1997

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ISSUES

I. **Sales/Use Tax – Market Surveys and Reports**

Authority: IC 6-2.5-2-1, IC 6-2.5-3-2, IC 6-2.5-1-1, IC 6-2.5-1-2, 45 IAC 2.2-4-2, 45 IAC 15-3-2.

The Taxpayer protests the Department's assessment of sales/use tax on market surveys and reports.

II. **Sales/Use Tax – License and Service Agreements**

Authority: IC 6-2.5-2-1, IC 6-2.5-3-2, IC 6-2.5-4-6, IC 6-2.5-4-10, 45 IAC 2.2-3-13.

The Taxpayer protests the Department's assessment of sales/use tax on fees paid to receive radio and television feeds transmitted by satellite.

STATEMENT OF FACTS

The Taxpayer is a limited liability corporation that is owner/operator of a television station. An audit was conducted for sales/use tax for 1996 and 1997 and during the audit, the Taxpayer was assessed sales/use tax on market surveys and reports it uses to determine viewer ratings. Also, the Taxpayer was assessed sales/use tax on the purchase of licensing agreements for programming feeds (broadcast transmission via satellite). More facts will be provided as necessary.

I. **Sales/Use Tax**: **Market Surveys and Reports**

DISCUSSION

The Taxpayer was assessed sales/use tax on its market surveys and reports. The market surveys are composed of statistical information obtained by surveying selected samples of households within the Taxpayer's viewing or listening area. Households generally keep diaries of viewing or listening of the household members during a survey period and the survey provider then interprets and collates the information and presents the results of the survey to the Taxpayer in the form of a written report on a quarterly, monthly or daily basis. The Taxpayer uses the surveys to select and schedule programming, and for establishing rates for advertising time.

The Taxpayer contends that the proposed assessment from the audit erroneously subjects them to tax under IC 6-2.5-2-1 or IC 6-2.5-3-2 on its purchases or use of the service reports. IC 6-2.5-2-1 imposes sales tax on retail transactions (transfer of tangible personal property for consideration) made in Indiana. IC 6-2.5-3-2 imposes use tax on the storage, use or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction as defined for sales tax purposes, regardless of the location of that transaction or of the retail merchant making that transaction.

Although there is a transfer of tangible personal property (the market survey reports), the Taxpayer argues that the physical report is inconsequential to the service provided. They state that the object of the market surveys is the provision of information services and the performance of a survey within the Taxpayer's viewing or listening area. The Taxpayer contends that the receipt of information obtained by the survey provider is in complete compliance with Rule 45 IAC 2.2-4-2 and thus, not taxable. Rule 45 IAC 2.2-4-2 states that where in conjunction with rendering services, a service provider, also, transfers tangible personal property for consideration, same will constitute a transaction of a retail merchant selling at retail unless:

1. The service provider is in an occupation which primarily furnishes and sells services, as distinguished from tangible personal property;

2. The tangible personal property is used or consumed as a necessary incident to the service;

3. The price charged for the tangible personal property is inconsequential (not to exceed 10%) compared with the service charge; and

4. The service provider pays gross retail or use tax upon the tangible personal property at the time of acquisition.

The Taxpayer relies on a previous Revenue Ruling to support their argument. The Ruling discusses whether market surveys and reports used by television broadcasters are subject to sales/use tax. The Ruling states that if the survey provider is in complete compliance with all the provisions of Rule 45 IAC 2.2-4-2 and the broadcasters pay on a "lump sum" basis, the provider is not obligated to collect sales/use tax on the sale of market surveys and reports.

However, if they are not in complete compliance with the provisions of Rule 45 IAC 2.2-4-2 they are responsible for the sales/use tax.

Here, the Ruling cannot be used as precedent by the Taxpayer because they were not the party named in the ruling. Pursuant to 45 IAC 15-3-2(3): "In respect to rulings issued by the department, based on a particular fact situation which may affect the tax liability of the taxpayer, only the taxpayer to whom the ruling was issued is entitled to rely on it."

Additionally, the physical report cannot be viewed as inconsequential because it is the object of the Taxpayer's purchase. The survey provider is gathering information to sell the finished product, which is the report. The situation is analogous to selling a book; the final product is being purchased (*i.e.* the book) and not the thought that went into writing it. Therefore, the market survey provider is not providing a service as required by the provisions of Rule 45 IAC 2.2-4-2.

Although the Taxpayer contends that the reports are created specifically for them, the argument is not compelling. The survey provider will collect the information from the viewers in the designated area and sell that information to any broadcaster that requests it. Simply requesting information for certain demographics does not show that the information was collected specifically for the Taxpayer since other broadcasters may request and receive information regarding the same group of people.

The Taxpayer also provides a copy of a service agreement to support their argument that the market surveys are a service. The Taxpayer contends that the agreement specifies that they are bargaining for a service and points out that the Taxpayer is requesting a license to use that analyses and the material supplied is used merely to convey the information that was obtained. Yet, the agreement should be treated in much the same way as a copyright. Its purpose is to protect the information from being unlawfully disseminated and is unpersuasive in showing that the Taxpayer was bargaining for a service. Thus, the Taxpayer's protest must be denied.

FINDING

The Taxpayer's protest is respectfully denied.

II. Sales/Use Tax: License and Service Agreements

DISCUSSION

The Taxpayer was assessed sales/use tax on licensing fees for receiving television and radio programming feeds transmitted by satellite from an out-of-state source. The Taxpayer claims that the programming feeds are not tangible personal property and that they are purchasing the right to receive transmitted television and radio signals that are transmitted to the Taxpayer via satellite.

However, IC 6-2.5-4-6 states that certain types of "telecommunication services" are taxable. Satellite transmissions are considered "telecommunication services" for the purpose of IC 6-2.5-4-6. IC 6-2.5-4-6(a) states:

> As used in this section, 'telecommunication services' means the transmission of messages or information by or using wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities. The term does not include value added services in which computer processing applications are used to act on the form, content, code, or protocol of the information for purposes other that transmission.

Also, per IC 6-2.5-4-11(a): "A person is a retail merchant making a retail transaction when he furnishes local cable television service or intrastate cable television service." The Department considers cable television services and satellite broadcast services to be similar. The taxable consequences of the sales of the respective programming services are comparable. Consequently, the Department finds the Taxpayer's fees for satellite transmissions are subject to Indiana's gross retail tax.

FINDING

The Taxpayer's protest is respectfully denied.